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CHRISTOPHER S. ELMENDORF & DAVID SCHLEICHER

## Districting for a Low-Information Electorate

**ABSTRACT.** Most commentary on redistricting is concerned with fairness to groups, be they racial, political, or geographic. This Essay highlights another facet of the redistricting problem: how the configuration of districts affects the ability of low-information voters to secure responsive, accountable governance. We show that attention to the problem of voter ignorance can illuminate longstanding legal-academic debates about redistricting, and that it brings into view a set of questions that deserve our attention but have received little so far. District designers should be asking how alternative maps are likely to affect local media coverage of representatives, as well as the “branding” strategies of political party elites. Bearing these questions in mind, we offer some tentative suggestions for reform.

**AUTHOR.** Christopher Elmendorf is Professor of Law, University of California at Davis. David Schleicher is Associate Professor of Law, George Mason University School of Law, and Visiting Professor of Law, New York University School of Law. The authors are indebted to Joey Fishkin for helpful comments, and to the Deans of George Mason Law School, N.Y.U. Law School, UC Davis School of Law, and UC Hastings College of the Law for research support.



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## INTRODUCTION

People who talk about election law generally do not talk much about voter ignorance. The preferences of voters, and the wisdom of those preferences, are taken as a given. The main questions we ask are whether election laws hinder citizens from registering their preferences or from aggregating votes to elect their “candidates of choice.” But expressed voter preferences are not necessarily wise—that is, they are not necessarily the same as informed preferences, or what voters would think if they knew basic facts about politics or policy. And this turns out to matter very much for how we design our electoral institutions.

Electoral districting at first glance may seem unrelated to voter knowledge. Drawing lines in one place rather than another does not, as such, provide information to or withhold it from voters. This Essay contends, however, that political science research on what voters know, and how they make decisions when they do not know very much, sheds light on longstanding debates about gerrymandering. District design can either ameliorate or exacerbate problems associated with voter ignorance.

We begin with a critique. A number of prominent scholars defend bipartisan gerrymanders—schemes that lump Democratic and Republican voters into safe districts for each party—on the ground that moving from a competitive map to a bipartisan gerrymander merely relocates the type of election in which voters hold politicians accountable, from general elections to primary elections. But this proposition, which we call the “substitutability thesis,” rests on a fundamentally mistaken premise about the equivalence of voter performance in these two types of elections. In general elections, voters benefit from political party labels that summarize candidates’ positions on the issues and enable voting based on the citizen’s “running tally” of observations about a party’s past performance when exercising power. If you, like most voters, don’t know much about the individual candidates in a race, it frequently will not matter that much. Having a feel for the ideology and past performance of Democrats and Republicans as a whole is usually enough to determine which candidate to support even if you know nothing about the candidates beyond their party affiliation. Political scientists continue to debate how well voters perform with party labels on the ballot, but no one doubts that party brands have great potential to help voters leverage the little information they have. Or, as E.E. Schattschneider once said: “[M]odern democracy is unthinkable save in terms of the parties.”<sup>1</sup>

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1. E.E. SCHATTSCHNEIDER, *PARTY GOVERNMENT: AMERICAN GOVERNMENT IN ACTION* 1 (Transaction Publishers 2004) (1942).

In primary elections, however, ordinary voters receive no similar assistance. There are no ballot labels to help voters identify and understand candidates' affiliations with internal party factions. As a result, voters are simply less informed in primaries and less capable of using these elections to achieve accountable and responsive government. Because primary elections do not provide ordinary voters with the tools (ballot labels) that allow them to overcome their lack of knowledge about individual candidates, narrow and well-organized groups tend to control the outcomes. Primary election competition, which is more likely to occur in safe districts, simply is *not* an adequate substitute for the general election competition we see in districts whose electorates are split between Democrats and Republicans. Bipartisan gerrymanders shift the locus of accountability to an information-poor environment.

After developing that critique, we turn to the affirmative question of how districts should be designed in light of the fact that ordinary voters pay little attention to politics. We make two claims. More confidently, we assert that districts should be designed for congruence with media markets, so that district lines match the distribution area of a newspaper or television network. Numerous studies have shown that voters in such "media-market districts" are more cognizant of their representatives and that their representatives behave as if on a tighter leash. This finding is consistent with evidence that voters are passive, haphazard consumers of political information, learning political facts as they go about their daily business rather than through focused searches. Newspapers are more likely to cover the exploits of politicians who represent their whole market, rather than just a part of it, and this helps to educate voters who do no more than skim the news headlines en route to the cartoons or sports. Media-market congruence at the very least belongs on the list of good-government districting criteria, alongside such traditional considerations as respect for communities of interest and political subdivision boundaries.<sup>2</sup>

More speculatively, we offer some guidelines for drawing districts so as to induce the development of party brands that are more instrumentally useful to low-information voters. The meaning of a party's brand is partially determined by the positions that party-affiliated lawmakers take and by what the legislature does under each party's rule. Although other factors may matter

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2. We take no position on how tradeoffs between media-market congruence and the traditional districting criteria should be resolved, but we note that the traditional criteria (respect for political subdivision boundaries and communities of interest) may in fact work as proxies for media-market congruence, or for an informational community more generally. People who live in the same political territory and who have similar interests are also likely to rely on the same media sources and to share information with one another.

more—most notably, the performance of the President—districting can have consequences for the content of party brands because of how it influences the makeup and incentives of the parties' legislative caucuses. Because voters' ability to use elections to produce competent, responsive governance depends on the informational value of party brands, policymakers should account for the effects of districting on these brands.

To foster the development of useful party brands, we offer three districting guidelines. First, districts should be drawn such that the median voter in the polity as a whole is also the median voter in the median district. This will give both parties an incentive to develop platforms that appeal to a majority of voters. Second, there should be a substantial number of median-voter districts, i.e., districts whose median voter is also the median voter in the polity. This will result in a large "winner's bonus"—a disproportionate number of seats for the party that wins the median voter—which strengthens the incentives of party-affiliated lawmakers to build a competitive, coherent party brand (against any other interests they may have). Because of the large winner's bonus, the majority party will generally have a supermajority of legislative seats, enabling it to govern and helping voters to see which party deserves credit (or blame) for the legislature's output.

Finally, there should not be too much interdistrict heterogeneity in the ideological position of the median voter across districts; that is, districts should not be too different from one another in their ideological makeup. As interdistrict heterogeneity increases, the major parties tend to become extreme or diffuse in order to forestall third-party challenges in some districts. Either outcome is problematic from the perspective of a low-information electorate seeking to achieve policies that are accountable and responsive to majoritarian preferences. Greater heterogeneity in district medians will lead either to party brands that are less meaningful or to parties that take positions further away from the preferences of the median voter.

We discuss how existing districting practices and criteria likely fare in terms of our guidelines (generally, not so well), and we suggest some alternatives. The reforms we outline are far from comprehensive, and they do not take into account all of the factors that might reasonably matter when districting. But, whatever else is taken into account, policymakers drawing district lines should consider what voters know—and more importantly, what they do not.

## **I. VOTER IGNORANCE, BRIEFLY**

If there is any well-accepted fact in political science, it is that most voters pay little attention to politics and know little about the basic institutions of

government.<sup>3</sup> Fifty years of survey research bear out the hypothesis of “rational ignorance”: because the probability of tipping an election’s outcome with one ballot is vanishingly small, individual voters have no material incentive to become informed about politics and policy.<sup>4</sup> And so, for the most part, they do not.<sup>5</sup> What political information they do have, they frequently acquired adventitiously, as a byproduct of, for example, paying the tax collector, noticing a political headline when scanning the tabloids for celebrity gossip, sending kids to school, or losing a job, rather than as the result of a vote-motivated search.<sup>6</sup>

Yet political scientists who study voting are not altogether despondent. An electorate comprised of fairly disinterested and uninformed voters may nonetheless perform reasonably well, thanks to the statistical properties of aggregation and the role of political parties.

Aggregation can neutralize uninformed votes. Ballots cast for one candidate by citizens whose decision is essentially a coin flip will offset those cast for her opponent, leaving the election’s outcome to be determined by voters possessed of relevant information.<sup>7</sup> Moreover, the Condorcet Jury Theorem establishes that if votes are just a little bit better than random, the electorate as a whole will converge on the “right answer” with high probability even though each

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3. Philip Converse put it thusly: “The pithiest truth I have achieved about electorates is that where political information is concerned, the mean level is very low but the variance is very high.” Philip E. Converse, *Assessing the Capacity of Mass Electorates*, 3 ANN. REV. POL. SCI. 331 (2000).
  4. We review this literature at great length in a companion piece, Christopher S. Elmendorf & David Schleicher, *Informing Consent: Voter Ignorance, Political Parties, and Election Law* 8-21 (UC Davis Legal Studies Research Paper Series, Research Paper No. 285, Feb. 17, 2012), available at <http://ssrn.com/abstract=2010115>.
  5. Voters know little about politics or individual candidates and do little to cure their ignorance. See *id.* at 9-13; see also MICHAEL X. DELLI CARPINI & SCOTT KEETER, *WHAT AMERICANS KNOW ABOUT POLITICS AND WHY IT MATTERS* (1996) (surveying polling on voter knowledge of specific questions about politics); Ilya Somin, *Political Ignorance and the Countermajoritarian Difficulty: A New Perspective on the Central Obsession of Constitutional Theory*, 89 IOWA L. REV. 1287, 1304-06, 1310, 1313-14 (2004) (surveying the literature on voter ignorance).
  6. The cheap availability of knowledge about politics, and the ability to gain it without motivated search, is central to arguments that suggest voter ignorance is not a major problem. See SAMUEL L. POPKIN, *THE REASONING VOTER: COMMUNICATION AND PERSUASION IN PRESIDENTIAL CAMPAIGNS* 22-26 (2d ed. 1994); DONALD A. WITTMAN, *THE MYTH OF DEMOCRATIC FAILURE: WHY POLITICAL INSTITUTIONS ARE EFFICIENT* 11-12 (1995).
  7. See BENJAMIN I. PAGE & ROBERT Y. SHAPIRO, *THE RATIONAL PUBLIC: FIFTY YEARS OF TRENDS IN AMERICANS’ POLICY PREFERENCES* 15-26 (1992).

voter individually is almost as likely to be wrong as right, provided that voters' errors aren't excessively correlated.<sup>8</sup>

The salutary properties of aggregation do not, however, wholly allay the worries engendered by reams of survey research documenting mass ignorance of politics and policy.<sup>9</sup> For one, less informed voters are more likely to sit out an election,<sup>10</sup> and the less informed are disproportionately young, poor, and people of color.<sup>11</sup> If these voters stay home or cast votes that wash out in the aggregate, the government will not be answerable to the entire normative electorate, i.e., the class of citizens eligible to vote.<sup>12</sup> The assumption of uncorrelated errors is also tenuous. The whole point of a political campaign is to move opinion in the same direction. Largely inattentive voters may tune in just enough to all make the same mistake. Researchers have used various techniques for estimating which candidate or policy voters would support if well informed, and these studies have found that while aggregation helps, it does not fully neutralize mistakes.<sup>13</sup>

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8. While the classical Condorcet result assumed no correlation, Krishna Ladha has shown that correlation in errors does not invalidate the Jury Theorem but does push up the required quality of the answers or the required size of the electorate. Krishna K. Ladha, *The Condorcet Jury Theorem, Free Speech, and Correlated Votes*, 36 AM. J. POL. SCI. 617, 628-32 (1992).
  9. This literature is long and varied, beginning with the classic work in the field. ANGUS CAMPBELL, PHILLIP E. CONVERSE, WARREN E. MILLER & DONALD STOKES, *THE AMERICAN VOTER* (1960). It is summarized in Elemendorf & Schleicher, *supra* note 4, at 11-12, 16-19.
  10. On the relationship between information and participation, in the context of voter rolloff (when voters go to the polls but only partially complete their ballots), see Martin P. Wattenberg, Ian McAllister & Anthony Salvanto, *How Voting Is Like Taking an SAT Test: An Analysis of American Voter Rolloff*, 28 AM. POL. Q. 234 (2000).
  11. See DELLI CARPINI & KEETER, *supra* note 5, at 156-74 ("The underrepresentation of women, blacks, the poor, the young, and their various combinations, coupled with the overrepresentation of men, whites, the affluent, and older citizens [among the highly informed 'guardian class'] is profound and rivals the demographic distortions found in comparisons of the general public with elected officials.").

There is widespread disagreement about whether and to what extent the political preferences of eligible citizens who do not vote differ from the preferences of those who do. The differences do appear pronounced, however, in local government elections. See Zoltan Hajnal & Jessica Trounstine, *Where Turnout Matters: The Consequences of Uneven Turnout in City Politics*, 67 J. POL. 515, 517-18 (2005).

12. Recent research indicates that members of Congress are unresponsive to the issue preferences of their low-income constituents. See LARRY M. BARTELS, *UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE* 257-67 (2008). This could be due to lower turnout and lack of political information among the poor, but Bartels attempts to control for these factors and argues that other causes are also at work. *Id.* at 275-82.
13. See, e.g., Larry M. Bartels, *Beyond the Running Tally: Partisan Bias in Political Perceptions*, 24 POL. BEHAV. 117, 134 (2002) [hereinafter Bartels, *Running Tally*]; Larry M. Bartels,

But the “miracle of aggregation” is not the only basis for hope. Political scientists have also discovered that the organization of elections and governance through political parties can equip low-information voters to perform tolerably well. Foundational work by Morris Fiorina has shown that voters who observe politics only intermittently seem to develop a “running tally” judgment about what each party stands for.<sup>14</sup> If the parties themselves are reasonably consistent over time, and if candidates appear on the ballot bearing their party’s label, then voters who know almost nothing about the particulars of a given candidate can still make a sensible choice on the basis of their running-tally assessment of the party. Other researchers have demonstrated that the electorate as a whole can display “macropartisan” preferences that respond to what the government does and to movement in the ideological position of the median voter, even if only a few of us are behaving as Fiorina suggests.<sup>15</sup>

Indeed, the organization of politics through parties enables voters to play a constructive role even if they have no policy opinions whatsoever, and just a localized sense of whether things have been getting better or worse. So long as these voters discern which party is in charge and which is the principal opposition, they can cast a retrospective vote for the governing party or coordinate on an alternative, depending on their sense of local conditions.<sup>16</sup> Even such minimal political engagement provides elected officials with incentives to govern responsively.

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*Uninformed Votes: Information Effects in Presidential Elections*, 40 AM. J. POL. SCI. 194, 218 (1996) [hereinafter Bartels, *Uninformed Votes*]; Christopher H. Achen & Larry M. Bartels, *It Feels Like We’re Thinking: The Rationalizing Voter and Electoral Democracy* (conference paper prepared for Annual Meeting of the Am. Political Sci. Ass’n, Aug. 28, 2006), available at <http://www.princeton.edu/~bartels/thinking.pdf>.

14. MORRIS P. FIORINA, RETROSPECTIVE VOTING IN AMERICAN NATIONAL ELECTIONS 89-98, 105 (1981).
15. ROBERT S. ERIKSON, MICHAEL B. MACKUEN & JAMES A. STIMSON, *THE MACRO POLITY* 83 (2002) (“How could the electorate reward and punish its president based on an informed economic outlook when in fact the typical voter holds little information about the economy? This situation is one of many where the macro-level behavior of the electorate does not match the micro behavior of the typical citizen. . . . Individuals may stray from the consensus forecast about the economic future, but their errors cancel out, leaving only the message from the informed signal.”).
16. This proves challenging, particularly in federal systems. See, e.g., Andrew Leigh & Mark McLeish, *Are State Elections Affected by the National Economy? Evidence from Australia*, 85 ECON. REC. 210, 218 (2009); Justin Wolfers, *Are Voters Rational? Evidence from Gubernatorial Elections* 17 (Jan. 30, 2007) (unpublished manuscript), available at <http://bpp.wharton.upenn.edu/jwolfers/Papers/Voterrationality%28latest%29.pdf>.



There are caveats, of course. Many voters lack basic information about the partisan balance of power in government, or the distribution of public responsibilities across branches and levels of government—information that is necessary for retrospective, party-based voting.<sup>17</sup> Voters frequently reward or punish incumbents for events over which they have no control, ranging from the worldwide price of oil<sup>18</sup> to the success of the home-town football teams the weekend before the election.<sup>19</sup> Further, they have short time horizons, with economic performance right before an election playing a larger role in determining outcomes than performance earlier in an incumbent's term.<sup>20</sup> Comparative research shows that retrospective voting is a more powerful force in democracies with smaller numbers of parties and consolidated, rather than separated, governmental powers.<sup>21</sup> Clarity of control matters greatly. Also, partisanship for some voters is more affective than informational. These "Michigan voters," as we have elsewhere dubbed them,<sup>22</sup> tend to conform their observations and beliefs to their party identification rather than the other way around. Finally, in federal democracies, the major parties may fail to develop—or voters may fail to perceive—subbrands tailored to the issue space and electorate of subnational governments.<sup>23</sup> Where rebranding does not occur or is not understood by ordinary voters, the party that dominates national elections in the area (e.g., Republicans in South Carolina) is likely to have a de facto lock on the subnational government, even if the subnational government performs poorly.

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17. DELLI CARPINI & KEETER, *supra* note 5, at 69-71; Somin, *Political Ignorance*, *supra* note 5, at 1308, 1313.
  18. See Wolfers, *supra* note 16, at 13 (stating that voters are "systematically fooled into re-electing their governors when the oil price has shot up, while their counterparts in oil-dependent states vote their incumbents out").
  19. Andrew J. Healy, Neil Malhotra & Cecilia H. Mo, *Personal Emotions and Political Decision Making: Implications for Voter Competence 2* (Stanford Graduate Sch. of Bus., Research Paper No. 2034, 2009), available at [https://gsbapps.stanford.edu/researchpapers/detail1.asp?Document\\_ID=3269](https://gsbapps.stanford.edu/researchpapers/detail1.asp?Document_ID=3269).
  20. BARTELS, *supra* note 12, at 100-04.
  21. For a review of the literature, see Christopher J. Anderson, *The End of Economic Voting? Contingency Dilemmas and the Limits of Democratic Accountability*, 10 ANN. REV. POL. SCI. 271, 278-81 (2007).
  22. This application is in recognition of the foundational research on the sociology of partisanship by political scientists at the University of Michigan. See CAMPBELL ET AL., *THE AMERICAN VOTER*, *supra* note 9; Elmendorf & Schleicher, *supra* note 4, at 4.
  23. See generally David Schleicher, *What If Europe Held an Election and No One Cared?*, 52 HARV. INT'L L.J. 109, 138-52 (2011); David Schleicher, *Why Is There No Partisan Competition in City Council Elections? The Role of Election Law*, 23 J.L. & POL. 419, 421-27 (2007); Elmendorf & Schleicher, *supra* note 4, at 30-46.

The account of voter ignorance and political parties we have sketched turns out to have surprisingly far-reaching implications for districting. It casts in a new light the long-running debate about bipartisan gerrymanders, and it suggests some affirmative prescriptions. Districts should be designed to induce the development of competitive, coherent party brands and to facilitate inadvertent learning, i.e., voters becoming informed about their representative without really trying. Part II uses our story of voter ignorance and political parties as the basis for critiquing several prominent defenses of bipartisan gerrymanders. Part III argues that media-market congruence belongs on the list of conventional districting considerations as a way of helping voters to learn about their representative. And Part IV offers some tentative and admittedly speculative suggestions about district design to induce the development of more informative, instrumentally useful party brands.

## II. ON BIPARTISAN GERRYMANDERS AND THE SUBSTITUTABILITY THESIS

Legal scholars and other commentators have long debated the merits of bipartisan gerrymanders, which protect incumbents of both parties by filling each district with a supermajority of voters affiliated with one party.<sup>24</sup> Critics like Sam Issacharoff argue that this practice should be presumptively unconstitutional because it reduces general-election competition and thus the accountability of incumbent representatives.<sup>25</sup> Other scholars—most notably Nate Persily<sup>26</sup> and Thomas Brunell<sup>27</sup>—respond that bipartisan gerrymanders provide quasi-proportional representation, and merely shift the locus of competition from the general to the primary election.

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24. See *Gaffney v. Cummings*, 412 U.S. 735 (1973) (upholding the constitutionality of bipartisan gerrymander).

25. Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 HARV. L. REV. 593, 612-30 (2002); Samuel Issacharoff, *Surreply, Why Elections?*, 116 HARV. L. REV. 684 (2002).

26. Nathaniel Persily, *Reply, In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders*, 116 HARV. L. REV. 649, 661-62 (2002).

27. Brunell writes: "Rather than drawing 50-50 districts, we should be drawing districts that are overwhelmingly comprised of one party or the other (80-20 or even 90-10) to whatever extent possible" because it will "increase[] the number of voters who will be both happier with their representative and better served by this representative. This comes at no reduction in the level of faithfulness by the representatives as they remain uncertain about being reelected due to competition at the primary election stage." THOMAS L. BRUNELL, *REDISTRICTING AND REPRESENTATION: WHY COMPETITIVE ELECTIONS ARE BAD FOR AMERICA* 13 (2008); see also *id.* at 96 ("To the extent that competitiveness is healthy, we can substitute competitiveness at the primary election stage for competition in the general election.").

Persily writes, “There is no obvious reason why competitive primaries would not produce the same advantages of responsiveness, accountability, and ‘ritual cleansing’ . . . [as] competitive general . . . elections.”<sup>28</sup> Michael Kang goes further, arguing that uncompetitive districts with a supermajority of minority voters allow uniquely salutary forms of “democratic contestation” to occur in primary elections.<sup>29</sup> These districts, say Kang, enable minority communities to explore their internal disagreements.<sup>30</sup> Kang posits that internal disagreements will be suppressed in districts where the minority community can elect a responsive candidate but only by sticking together and forging coalitions with supportive majority-group voters.<sup>31</sup>

The arguments of Persily, Brunell, and Kang all rest on some version of what we will call the “substitutability thesis,” which holds that primary competition can substitute for general election competition as a means of achieving accountable government. Despite its prominence, the substitutability thesis is almost certainly wrong.

The substitutability thesis rests on an assumption that voters perform equally well in partisan and nonpartisan elections, i.e., elections in which the ballot fails to label candidates by their affiliation with the contending political factions.<sup>32</sup> After all, a primary election is just a nonpartisan election conducted among voters who choose to associate in some way with a political party. Studies of nonpartisan elections show that a large fraction of the electorate is basically lost at sea when deprived of party labels.<sup>33</sup> Many voters skip the race, and those who do vote have difficulty identifying the most ideologically congenial candidates.

Political scientists studying primary elections have generally found that neither the form of the primary elections nor the threat of a primary challenge much affects ideological positioning by a district’s representative. Despite what you hear on CNN, state laws mandating open (i.e., independents can vote) or closed (i.e., only party members can vote) primaries do not seem to have any systematic impact on anything measurable about legislator positioning or

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28. Persily, *supra* note 26, at 661–62.

29. Michael S. Kang, *Race and Democratic Contestation*, 117 YALE L.J. 734 (2008).

30. *Id.* at 798.

31. *Id.* at 794.

32. The thesis also ignores how general election competition across the entire system of legislative districts affects party positioning and strategy. We take up this point in Part IV *infra*.

33. See Elmendorf & Schleicher, *supra* note 4, at 26–29 and sources cited therein.

behavior.<sup>34</sup> Nor do actual primary challenges seem to lead members of Congress to appease their base and take extreme positions.<sup>35</sup> In a leading study of congressional elections over the course of the twentieth century, Stephen Ansolabehere, James Snyder, and Charles Stewart found that virtually all candidate positioning on the issues is determined by the stances of the national parties, rather than district characteristics.<sup>36</sup> There is some evidence that candidates move toward the district-level median voter, but party positions anchor the candidates substantially.<sup>37</sup>

All this might seem surprising, but it is consistent with decades of research on voter decisionmaking. Ordinary voters are dependent on parties and party labels to make sense of their choices. Party labels help voters infer candidate positions on the issues; party labels make it possible for voters to relate candidates to the team in charge of the government; and the parties' battle for control ensures that the most important races—those that could tip control of a branch of government from one party to the other—are well-funded contests that highlight each party's strengths and weaknesses.<sup>38</sup>

In primary elections, by contrast, the competing factions (internal to the party) are not labeled on the ballot. Only the savviest of insiders can be expected to know which party faction should receive the credit or bear the

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34. Eric McGhee et al., *A Primary Cause of Partisanship? Nomination Systems and Legislator Ideology* (Oct. 20, 2011) (unpublished manuscript), available at <http://ssrn.com/abstract=1674091>.
  35. See Stephen Ansolabehere, James M. Snyder, Jr. & Charles Stewart, III, *Candidate Positioning in U.S. House Elections*, 45 AM. J. POL. SCI. 136, 145 (2001) (finding no evidence that primaries increase the ideological gap between Democratic and Republican candidates for the House of Representatives); Shigeo Hirano, James M. Snyder, Jr., Stephen Ansolabehere & John Mark Hansen, *Primary Elections and Partisan Polarization in the U.S. Congress*, 5 Q. J. POL. SCI. 169, 169 (2010) (finding that none of the following had any effect on the voting behavior of members of Congress: the introduction of primaries; the polarization of the primary electorates; or the percentage of primary elections that are close or contested). *But see* Barry C. Burden, *Candidate Positioning in U.S. Congressional Elections*, 34 BRIT. J. POL. SCI. 211, 221–22 (2004) (finding that competitive primaries do increase the ideological distance between candidates).
  36. Ansolabehere, Snyder & Stewart, *supra* note 35, at 137. In periods where the party system is less strong, candidates take ideological positions that fit their districts to a greater degree. *Id.*
  37. Ansolabehere, Snyder, and Stewart find that candidates for the U.S. House “moderat[e] very little to accommodate local ideological conditions.” *Id.* at 136. But Burden, using recent survey data, finds considerable movement toward the median voter, with the extent of convergence depending on whether the race is contested, the gap in quality between the candidates, and whether the candidates fought contested primaries. *See* Burden, *supra* note 35, at 220–22.
  38. For a review of this literature, see Elmendorf & Schleicher, *supra* note 4, at 8–21.

blame for a party's recent triumphs or embarrassments. Voters are left to assess the candidates' individual ideological beliefs, and must do without the benefit of massive media attention, at least outside of presidential primaries. Given the lack of party brands and media coverage, few voters are likely to figure out the candidates' stances on issues.

Candidates and their strategists seem to understand this. In an exhaustive study of the content of congressional primary campaigns, Robert Boatright found that most contested primaries are fought over corruption by incumbent officials, or on the basis of geographic divides within the district.<sup>39</sup> Primary battles on the terrain of ideology are rare, and rarer still when the incumbent is herself a candidate. There has also been a steady decline in the number of contested congressional primaries over the last seventy years, despite a rise during this period in the number of safe seats—in which some scholars think primaries are more likely.<sup>40</sup>

Further insight comes from Seth Masket's remarkable recent book on party organization and primary elections in California.<sup>41</sup> Masket shows that primary competition has a very different character than general election competition. In general elections, mass-media appeals and party positioning on the issues matter a great deal. In primaries, organization determines everything. Groups with the wherewithal to get voters to the polls or give them the scraps of information they need to make up their minds control most legislative primaries. Candidates and organizers focus on "super-prime" voters and ignore the average party member, because average Joes know little about who the candidates are, what they believe, and how they have performed. The silent majority of party members stays silent, leaving the field to incumbents, political machines, and other organized groups.<sup>42</sup>

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39. Robert G. Boatright, Professor, Dep't of Gov't, Clark Univ., Remarks at University of Akron "State of the Parties" Conference: Getting Primaried: The Growth and Consequences of Ideological Primaries 25 (Oct. 14-16, 2009), available at [https://clarku.cc/departments/politicalscience/pdfs/boatright\\_sotpo9.pdf](https://clarku.cc/departments/politicalscience/pdfs/boatright_sotpo9.pdf).

40. Stephen Ansolabehere, John Mark Hansen, Shigeo Hirano & James M. Snyder, Jr., *More Democracy: The Direct Primary and Competition in U.S. Elections*, 24 STUD. AM. POL. DEV. 190, 196-99 (2010); Stephen Ansolabehere, John Mark Hansen, Shigeo Hirano & James M. Snyder, Jr., *The Decline of Competition in U.S. Primary Elections, 1908-2004*, in THE MARKETPLACE OF DEMOCRACY: ELECTORAL COMPETITION AND AMERICAN POLITICS 74, 82-96 (Michael P. McDonald & John Samples eds., 2006).

41. SETH E. MASKET, NO MIDDLE GROUND: HOW INFORMAL PARTY ORGANIZATIONS CONTROL NOMINATIONS AND POLARIZE LEGISLATURES 54-86 (2009).

42. Cf. Joseph Bafumi & Michael C. Herron, *Leapfrog Representation and Extremism: A Study of American Voters and Their Members in Congress*, 104 AM. POL. SCI. REV. 519, 536-37 (2010) (showing that campaign donors are more ideologically extreme than the median voter in

Given what other researchers have found, it would be a great surprise to discover, as Michael Kang asserted in these pages, that primary elections in supermajority-minority districts are rich sites of “democratic contestation,” which Kang defines as “deliberative competition among political leaders to shape and frame the public’s understandings about elective politics, public policy, and civic affairs.”<sup>43</sup> Kang worries that in so-called coalition or crossover districts—districts with just enough minority voters to elect a minority “candidate of choice” in coalition with sympathetic whites—minority citizens will face pressure not to air their internal disagreements.<sup>44</sup> The reason is that if those disagreements were to become electorally salient, the minority community might split its vote, resulting in the election of an indifferent representative. In districts where minority voters make up nearly all of the majority-party primary electorate, this vote-splitting concern disappears. Further, Kang argues that mainstream election law theory—particularly “politics as markets” scholarship deriving from the classic work of Issacharoff and Rick Pildes—focuses excessively on general election competition when thinking about all election law problems while ignoring the benefits of “contestation” at other stages of the electoral process.<sup>45</sup>

Tellingly, however, Kang provides no illustrations of primary-election issue contestation in majority-minority districts.<sup>46</sup> There are strong reasons to believe it is not very important. Almost all primaries in majority-minority

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each party, and arguing that extremism of congressional delegations—relative to median voter and median partisan voter in the state—can be explained by extremism of political donors).

43. Kang, *supra* note 29, at 738.

44. *Id.* at 794-98.

45. *Id.* at 736-39, 760-61 (citing, inter alia, Samuel Issacharoff & Richard H. Pildes, *Politics as Markets: Partisan Lockups of the Democratic Process*, 50 STAN. L. REV. 643 (1998)).

46. For purposes of this critique, we focus on whether supermajority-minority districts actually induce contestation per Kang’s definition. But we would like to note in passing our doubts about whether “contestation” is of any use as a way to solve election law problems, at least as the idea is currently constructed. In *all* democratic systems (and even undemocratic ones) there is “competition among political leaders and efforts to shape and frame [public opinion].” Kang, *supra* note 29, at 738. The differences between electoral systems (e.g., proportional representation or first-past-the-post voting systems) and between alternative legal regimes within a system (e.g., blanket primaries vs. closed primaries) lie in *which* leaders are proposing ideas and to *which* part of the public they are proposing them. Kang does not provide any method for favoring one type of contestation over another, or for evaluating tradeoffs between types of contestation. Kang notes that this is a difficulty with his method, but it is hard to think of any method internal to Kang’s approach that would allow a policymaker to determine, for example, whether a 5% increase in primary election competition is worth a 3% decline in general election competition.

districts are blowouts. Close races, when they occur, are largely due to nonideological factors such as the existence of open seats or corruption-tinged incumbents.<sup>47</sup> In the last two congressional election cycles, only one incumbent in a minority-majority district has lost his seat in a primary where the candidates differed substantially on policy issues.<sup>48</sup>

Kang notes that among African Americans there is widespread disagreement about marriage equality for same-sex couples, and he asserts that this is the type of issue likely to be aired in Democratic primaries in supermajority-minority districts (but not in coalition districts), yet he furnishes no evidence of this occurring. We searched newspapers for congressional primary debates over marriage equality, civil unions, and the

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47. In 2008, in the seventy-three districts where African Americans, Hispanics, and/or Native Americans comprised at least 50% of the electorate, there were only six primaries where the eventual winner of the seat got less than 66% in the primary, and only four incumbents were held under that number (including one incumbent who lost in the general election after facing a close primary). See MICHAEL BARONE WITH RICHARD E. COHEN, *THE ALMANAC OF AMERICAN POLITICS* 2010, at 450, 660, 705, 798, 1012, 1014, 1016 (Jackie Koszczuk ed., 2009) [hereinafter BARONE WITH COHEN, *ALMANAC* 2010]. In 2010, the numbers were similar—there were eight minority-majority districts where the winner of the seat got less than 66% in the primary, and only three featuring incumbents. MICHAEL BARONE WITH CHUCK MCCUTCHEON, *THE ALMANAC OF AMERICAN POLITICS* 2012, at 37, 427, 450, 699, 856, 1158, 1590, 1600 (2011) [hereinafter BARONE WITH MCCUTCHEON, *ALMANAC* 2012]. Further, most of the primaries were not particularly ideological; most of the few close races were caused by the existence of open seats, occurred inside a party that had not held the seat previously, or were the result of incumbents ensnared in corruption scandals. Of the seven competitive primaries featuring incumbents over both cycles, five featured candidates who had been indicted, had children in politics who were indicted, failed to properly pay their taxes, or were later censured by the House of Representatives for ethical violations. See BARONE WITH COHEN, *ALMANAC* 2010, at 451, 660, 705, 800 (discussing how incumbent Representatives Scott, Jefferson, and Kirkpatrick were held to under 66% in their primaries following ethics or tax questions; Representative Wynn lost his primary to candidate on the ideological left); BARONE WITH MCCUTCHEON, *ALMANAC* 2012 at 450, 856, 1158 (reporting that Representative Kirkpatrick lost following the indictment of her son; Representative Rangel was held to under 66% in a primary immediately prior to his censure by the House of Representatives on ethics charges; Representative Johnson was held to under 66% in a three-way primary after revealing substantial health problems).

48. Ex-Representative Al Wynn was defeated by now-Representative Donna Edwards, who challenged him for being too conservative and particularly for supporting the war in Iraq. BARONE WITH COHEN, *ALMANAC* 2010, *supra* note 47, at 705; Rosalind S. Helderman, William Wan & Ovetta Wiggins, *Rare Dual Losses in Md. Put Incumbents on Notice*, WASH. POST, Feb. 14, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/13/AR2008021301594.html>.

Defense of Marriage Act in majority-minority districts, and we found little indication that marriage equality has been an issue in these primaries.<sup>49</sup>

This is no criticism of voters in majority-minority districts. These districts actually feature somewhat *more* competitive primaries than other districts.<sup>50</sup> But down-ballot legislative primary elections do not provide voters with ballot labels that facilitate policy-minded voting, and they are not high profile enough to engage voters in policy debates. Mainstream election law theory is right to focus on general election competition—on competition *between* the parties—because that is when the actual electorate, and not some idealized one, is able to participate meaningfully in the project of self-governance.

We shall return in Part IV to the question of how district design shapes general election competition and, by extension, the parties' ideological positioning and governance strategies. Before engaging these difficult questions, however, we would like to make a more straightforward point about districting and media markets.

### III. MEDIA-MARKET DISTRICTS

The design of legislative districts has consequences for news media coverage of representatives and the candidates who would unseat them. Imagine for a moment that you edit a newspaper or TV news show. A local

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49. We ran LexisNexis searches in the Major Newspapers database for every close race in 2006 and 2008 as well as having a research assistant do the same in close primaries from the mid-1990s, before and after the Defense of Marriage Act passed. Given that this is far from a thoroughgoing review of all potential campaign materials, it is possible that we missed some debate on the issue. That said, we feel confident in asserting that the differences of opinion on the issue that Kang found in minority communities are not a regular topic of debate in congressional primaries. It is harder to study the content of state legislative primaries—there is less major newspaper coverage to survey. When marriage equality was in question in the New York state legislature, there were several primaries, including some in majority-minority districts, where the issue became prominent. See Clare Trapasso, *Democratic State Senators Who Voted Against Same-Sex Marriage in New York Face Wrath of Advocates*, DAILY NEWS (N.Y.), Dec. 10, 2009, [http://articles.nydailynews.com/2009-12-10/local/17940936\\_1\\_marriage-equality-gay-marriage-same-sex-marriage](http://articles.nydailynews.com/2009-12-10/local/17940936_1_marriage-equality-gay-marriage-same-sex-marriage). Even where groups involved in the fight for marriage equality were involved in such races, they did not necessarily discuss the issue, instead focusing their campaign at district-specific issues. See Valerie Berlin, *Gays and Lesbians Fight Back—and Win: Taking the LGBT Equality Struggle to the Ballot Box*, CAMPAIGNS & ELECTIONS, May 2010, at 22, 24 (“[O]ur messaging to voters would emphasize Monserrate’s considerable personal and professional shortcomings—and not marriage equality . . .”). None of this is to say that issues like marriage equality never come up in minority-majority primaries, just that we are skeptical that it happens very often or that it engages the mass of people eligible to vote in the primary to any meaningful degree.

50. Boatright, *supra* note 39, at 13-14.



congressman, say Representative Schleichmendorf, is hosting a news conference to announce and explain his position on a controversial and long-debated piece of legislation. You must decide whether to cover this event and if so how intensely. If most of your readership (or viewership) resides in Schleichmendorf's district, you are more likely to deem it worthy of coverage than if just a few of your readers do. After all, if your readership were evenly divided between, say, ten legislative districts, it would be impractical—or boring in the extreme—to regularly cover each representative's doings.

The correspondence between district boundaries and media markets also affects candidates' incentives to buy advertising. If all of a newspaper's readers live in Schleichmendorf's district, then an ad in the paper is going to reach many more potential voters than if only 10% of the readership lives in the district.

These considerations imply that voters in districts that correspond to media-market boundaries will, on average, be better informed about their representative (and about challengers vying for the seat) than voters in incongruent districts, i.e., districts that cut across many media markets and districts that are "submerged" within a single, much larger media market. This conclusion should hold even if few citizens put much effort into becoming informed about legislative races. A voter who subscribes to the newspaper for its business coverage may end up scanning the politics page if he is stuck on the bus and has finished the business section. Another who watches television news for the weather forecast or the sports highlight reel may pick up some political news along the way.

This Part begins with a review of empirical evidence on the effects of district/media-market congruence. It then offers some suggestions for district design.

### *A. The Evidence*

Research on district/media-market "congruence effects" got underway in the mid-1980s. Political scientists and economists have studied the effects of congruence on news coverage of legislators; on whether voters recognize or recall candidates' names; on voters' ability to place their representative ideologically, to list "likes and dislikes" about her, and to identify her position on major bills; on voter turnout and "rolloff" (declining to vote in down-ballot races); and on representatives' effort and their attentiveness to the median voter in their district. These studies use different metrics of media-market congruence, and they look at different types of media. The conclusions are varied but some common points recur.

First, though only a small number of researchers have undertaken the laborious task of coding newspaper and television coverage to see whether representatives of congruent districts receive more media attention than representatives of incongruent districts, the results to date show that they do.<sup>51</sup> This holds for television as well as newspapers.<sup>52</sup>

Further, there is a clear and powerful effect of congruence on voter recognition and recall of their representative's name, as well as the names of challengers. This is the best-established result in the literature. Every study of media-market congruence has looked at some measure of name recognition or recall, and every study has found positive, statistically significant effects.

Name recognition is not, of course, a good in itself, though it probably correlates with other measures of political knowledge. A couple of papers examine substantive knowledge more directly. James Snyder and David Strömberg, in a meticulous study of congressional district congruence with newspaper markets, found a positive association between congruence and voters' ability to place their representative on an ideological scale and to list "likes and dislikes" about her.<sup>53</sup> Snyder and Strömberg estimate that a one standard deviation gain in congruence yields a six to eight percentage point increase in knowledge so measured.<sup>54</sup>

51. See DANIELLE VINSON, *LOCAL MEDIA COVERAGE OF CONGRESS AND ITS MEMBERS: THROUGH LOCAL EYES* 29-33, 44-45, 58-63, 79-72, 88-92, 152-53 (2003) (finding significant positive association between media-market congruence and coverage of congressional representatives, the representative's district-level activities, the representative's explanations of her votes, and of campaigns for the representative's seat; but finding no positive association between congruence and coverage of Congress generally); Brian F. Schaffner, *Local News Coverage and the Incumbency Advantage in the U.S. House*, 31 *LEGIS. STUD. Q.* 491, 494-96 (2006) (looking at television and newspaper coverage of members of Congress in 1999, and finding large variation depending on congruence defined in terms of Nielsen "major television markets"); Brian F. Schaffner & Patrick J. Sellers, *The Structural Determinants of Local Congressional News Coverage*, 20 *POL. COMM.* 41, 47-53 (2003) (reporting similar findings); James M. Snyder, Jr., & David Strömberg, *Press Coverage and Political Accountability*, 118 *J. POL. ECON.* 355, 361 (2010) ("The driving force behind all results in this paper is that the number of articles,  $q_{md}$ , that a newspaper  $m$  writes about a House representative from district  $d$  is strongly increasing in the share of this newspaper's readers who live in district  $d$  . . ."); see also Timothy S. Prinz, *Media Markets and Candidate Awareness in House Elections, 1978-1990*, 12 *POL. COMM.* 305 (1995) (finding, based on 1978-1990 data, that survey respondents self-report "contact" with their representative—defined to include reading or hearing news coverage about the representative—at higher rates in more congruent districts).

52. See *infra* note 67 and accompanying text.

53. Snyder & Strömberg, *supra* note 51, at 387.

54. *Id.* at 402. Note that Snyder and Strömberg's methodology does not allow one to say whether voters are making *correct* ideological assessments of their representative.

Daniel Lipinski looked at whether congresspersons' efforts to publicize their votes on two controversial bills influenced constituents' perceptions of the congressperson's position. One bill was adopted on a party-line vote; the other split the parties.<sup>55</sup> With respect to the bill that split the parties, voters in high-congruence districts correctly identified their representative's position at a much higher rate than voters in low-congruence districts (a difference of approximately fourteen percentage points).<sup>56</sup> With respect to the other bill, congruence was unimportant.<sup>57</sup> This makes sense, because there is little basis for expecting congruence to much affect news reporting on the party as a whole. If all that voters need to estimate their representative's position is the party's position, then congruence should not improve voters' placement of their representative.

Researchers have yet to examine whether congruence affects ideological voting in legislative races, that is, whether voters in more congruent districts are more likely to cast their ballot for the ideologically proximate candidate.<sup>58</sup> But members of Congress *behave* as if they face closer scrutiny—both ideologically and otherwise—in more congruent districts. Thus, Snyder and Strömberg estimate that a one standard deviation increase in newspaper market congruence reduces the “gap” between the expected ideological difference of Democratic versus Republican representation by five percentage points.<sup>59</sup> This implies that representatives from more congruent districts are more likely to buck the party line when it deviates from the district median voter's preference. Marty Cohen, Hans Noel, and John Zaller obtain similar results using several other measures of congruence, though the effects they found are substantively small over typical values of congruence.<sup>60</sup>

Members of Congress from congruent districts also appear to put in more effort. As Snyder and Strömberg showed (using their newspaper-based measure of congruence), representatives from congruent districts are much

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55. Daniel Lipinski, *The Effect of Messages Communicated by Members of Congress: The Impact of Publicizing Votes*, 26 LEGIS. STUD. Q. 81, 81-82 (2001).

56. *Id.* at 93.

57. Indeed, there was a negative but statistically insignificant correlation. *Id.* at 94-95.

58. Political scientists have recently developed comparable measures of voter and candidate ideology, which will enable this question to be investigated. See, e.g., Boris Shor & Jon C. Rogowski, *Congressional Voting by Spatial Reasoning* (Aug. 25, 2010) (unpublished manuscript), available at <http://ssrn.com/abstract=1643518>.

59. Snyder & Strömberg, *supra* note 51, at 402.

60. Marty Cohen, Hans Noel & John Zaller, *Local News and Political Accountability in U.S. Legislative Elections* (conference paper prepared for the Annual Meeting of the Am. Political Sci. Ass'n, Sept. 2, 2004), available at [http://www.allacademic.com/meta/p60226\\_index.html](http://www.allacademic.com/meta/p60226_index.html).

more involved in committee hearings and win significantly more federal spending for the voters back home.<sup>61</sup>

Other hypothesized consequences of district/media-market congruence have been harder to pin down. It has been argued that congruence should result in higher rates of voter participation, because voters in more congruent districts are more likely to have an opinion about the candidates, which in turn should motivate or enable voting. But the results are mixed: some researchers find a significant positive effect of congruence on voter participation;<sup>62</sup> others, using different data or different congruence metrics, find no significant effect.<sup>63</sup>

A number of scholars have also contended that media-market congruence should reduce the advantages of incumbency, because in congruent districts it

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61. Snyder & Strömberg, *supra* note 51, at 391, 400 (reporting that a one standard deviation increase in congruence corresponds to a 10% increase in the representative's number of appearances at congressional hearings as a witness, and a 3% increase in federal spending).
  62. See Richard N. Engstrom, *District Geography and Voters*, in REDISTRICTING IN THE NEW MILLENNIUM 65 (Peter F. Galderisi ed., 2005) (finding substantial effect of media-market congruence on turnout—and no effect of compactness or congruence with political subdivision boundaries—and further showing that this “turnout effect” appears to be mediated by voters’ ability to recall candidate names); see also Scott L. Althaus & Todd C. Trautman, *The Impact of Television Market Size on Voter Turnout in American Elections*, 36 AM. POL. RES. 824 (2008) (showing that precincts in larger media markets tend to have lower levels of turnout, controlling for other factors); cf. Danny Hayes & Seth C. McKee, *The Participatory Effects of Redistricting*, 53 AM. J. POL. SCI. 1006 (2009) (showing that voters “redistricted” out of their prior representative’s district were less likely to recognize their current representative and more likely to “roll off” in legislative elections). Though less directly on point, a number of studies have documented a link between newspaper penetration and voter participation. See, e.g., Lisa George & Joel Waldfogel, *The New York Times and the Market for Local Newspapers*, 96 AM. ECON. REV. 435 (2006) (showing that displacement of local papers by the *New York Times* national edition results in less voting in nonpresidential election years among likely readers of the *Times*); Matthew Gentzkow, Jesse M. Shapiro & Michael Sinkinson, *The Effect of Newspaper Entry and Exit on Electoral Politics* (Nat’l Bureau of Econ. Research, Working Paper No. 15544, 2009), available at <http://www.nber.org/papers/w15544.pdf> (showing that newspaper entry increases turnout in presidential and congressional elections by roughly 0.3 percentage points); Sam Schulhofer-Wohl & Miguel Garrido, *Do Newspapers Matter? Short-Run and Long-Run Evidence from the Closure of The Cincinnati Post* (Fed. Res. Bank of Minneapolis, Working Paper No. 686, 2011), available at <http://www.minneapolisfed.org/research/wp/wp686.pdf> (showing that the closure of a local newspaper with a circulation of 27,000 led to declines in voter turnout and in the number of candidates running for office in suburbs that the newspaper had covered relatively heavily in comparison to the major regional newspaper in the metropolitan area).
  63. Jonathan Winburn & Michael W. Wagner, *Carving Voters Out: Redistricting’s Influence on Political Information, Turnout, and Voting*, 63 POL. RES. Q. 373, 381 (2010) (finding no effect of district-media-market overlap on voter turnout when controlling for district-county overlap).

is easier for challengers to build name recognition through advertising. (Then again, incumbents should also benefit from more coverage of their achievements.) Some early papers found results consistent with the “diminished incumbency effect” hypothesis,<sup>64</sup> but more recent and methodologically sophisticated work has found that incumbents do just as well if not better in congruent districts or their functional equivalents.<sup>65</sup> Of course, that incumbents do just as well in congruent districts does not mean that congruence is unimportant for representation. It may be that incumbents do just as well because they adapt: by working harder, by voting in accordance with the district median, and by bringing home the bacon.<sup>66</sup>

### *B. Lessons for District Design*

It seems natural to conclude from the empirical literature that district boundaries should match media-market boundaries whenever possible. But this conclusion papers over some important questions that we touch on here.

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64. James E. Campbell, John R. Alford & Keith Henry, *Television Markets and Congressional Elections*, 9 LEGIS. STUD. Q. 665 (1984) (showing that congressional incumbents and challengers both have higher name recognition in more congruent districts, but the effect is proportionately larger for challengers); Dena Levy & Peverill Squire, *Television Markets and the Competitiveness of U.S. House Elections*, 25 LEGIS. STUD. Q. 313, 319 (2000) (finding a similar result using data covering more years and a model with more controls, and noting that “[i]ncumbents increase their name recall by 12% when running in the most congruent districts compared to running in the most fragmented districts,” and “[t]hat same comparison only boosts challengers’ name recall by 5%”).
65. Levy & Squire, *supra* note 64, at 317–23 (finding that, although congruent districts increase challenger name recognition and media contacts, such districts boost incumbent name recognition even more and incumbents do slightly better in more congruent districts, controlling for name recognition and media contacts); Snyder & Strömberg, *supra* note 51, at 359 (finding that incumbents have slightly greater levels of support in districts with greater newspaper-market congruence); *see also* Stephen Ansolabehere, Erik C. Snowberg & James M. Snyder, Jr., *Television and the Incumbency Advantage in U.S. Elections*, 31 LEGIS. STUD. Q. 469 (2006) (comparing incumbent vote share in races for statewide office, determining whether counties belong to “home state” and “other state” media markets, and finding that incumbents do just as well in counties that belong to “other state” media markets, notwithstanding strong in-state bias to TV reporting and candidates’ disproportionate allocation of advertising resources to home-state media markets). The Ansolabehere, Snowberg, and Snyder study, which unlike earlier work controls for candidate quality, raises grave doubts about the studies that purport to show that media-market congruence benefits challengers, since the authors demonstrate all of the predicted effects of congruence on news coverage and advertising yet find no associated increase in challenger vote share.
66. *See supra* text accompanying note 61 (discussing effects of congruence on quantifiable measures of representational quality).

### 1. Which Media Market? Newspapers vs. Television

Nearly all researchers have built their measures of congruence around the Nielsen television markets, which assign each county to one of 210 areas depending on where most county residents tune in for broadcast television. There is a pretty strong correlation between television market congruence, measured in this way, and newspaper coverage of representatives.<sup>67</sup> But it is not clear whether television matters as such, or whether the results using Nielsen congruence measures are driven entirely by newspaper coverage. Snyder and Strömberg tried to disentangle these effects and found no effect of TV market congruence on voter knowledge, holding constant the level of newspaper congruence.<sup>68</sup> In keeping with this, other studies have found that local newspapers cover members of Congress more intensively than does local television news.<sup>69</sup> And for purposes of local government elections, even small local papers have been found to have significant effects.<sup>70</sup>

Given what is known today, it probably makes more sense to design districts for newspaper rather than television-market congruence. This makes some intuitive sense: newspapers have a lot more space to devote to coverage of elected officials than do TV news programs. Politicians do care about earning free media coverage for events that will not make the six o'clock news. But in the absence of finer-grained data, the Nielsen markets stand as serviceable proxies for newspaper markets.<sup>71</sup>

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67. See EDIE N. GOLDENBERG & MICHAEL W. TRAUGOTT, *CAMPAIGNING FOR CONGRESS* 109-31 (1984) (arguing that the media market for television tends to overlap geographically with that of other media); Schaffner, *supra* note 51, at 495 (finding more newspaper coverage of incumbent politicians when their district boundaries are similar to the boundaries of a media market); Schaffner & Sellers, *supra* note 51, at 52 (finding that newspaper coverage of a congressional candidate will increase as the overlap between a newspaper market and that candidate's congressional district increases).

68. See Snyder & Strömberg, *supra* note 51, at 378 (finding that TV market congruence is not significantly related to voter information, but newspaper congruence is so correlated).

69. See VINSON, *supra* note 51, at 27-33.

70. See, e.g., Schulhofer-Wohl & Garrido, *supra* note 62, at 23-24; Jessica Trounstein, *Incumbency and Responsiveness in Local Elections* 18-21 (2010) (unpublished manuscript), [http://faculty.ucmerced.edu/jtrounstine/low\\_info\\_draft4.pdf](http://faculty.ucmerced.edu/jtrounstine/low_info_draft4.pdf) (finding lesser incumbency advantage in city council elections in cities that have a daily or weekly newspaper, as compared to cities without such a newspaper, and that local council members are more reluctant to increase their own pay in cities with a local newspaper).

71. See *supra* note 67 and accompanying text.

## 2. Integrating the Constitutional Requirement of “One Person, One Vote”

More vexing than the “TV or newspaper” issue is the question of how to reconcile the congruence approach to redistricting with the constitutional rule of one person, one vote. Some media markets are huge, particularly around major metropolitan areas. Rural markets have vastly fewer residents. A map of legislative districts that hewed to media-market boundaries would result in districts of grossly disparate population.

There are several ways of responding to this problem. One is to break up big media markets into smaller districts, but only so far as necessary to comply with one person, one vote.<sup>72</sup> Another is to press the courts to accept modest deviations from perfect population equality when the deviation furthers media-market congruence. Courts have approved small departures from population equality when the departure helps to maintain congruence with local political subdivisions,<sup>73</sup> and the case for a similar *de minimis* exception for media-market districts is at least as strong.

One can also drill down in search of more localized markets. By tracking the circulation patterns of small local papers, redistricters may be able to subdivide big urban media markets into roughly equipopulous districts while preserving some of the benefits of media-market congruence.

A more radical and far-reaching solution may also be worth considering.<sup>74</sup> Instead of adjusting district boundaries to comply with one person, one vote, a state could adjust the *weight of each representative’s vote*, or the number of representatives per district. This would enable the residents of very large media markets to be grouped into a single district, generating information for big city voters without diminishing their power in the legislature.

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72. Further, there is no reason that preserving media-market districts should not be added to the criteria that allow for some deviations from one person, one vote, just as preserving boundaries is used to justify state legislative districting practices with deviations from the equipopulational standard. See, e.g., *Brown v. Thomson*, 462 U.S. 835, 842 (1983) (noting that some deviation from equipopulational districts is allowed in order to maintain integrity of political subdivisions or provide for compact districts of contiguous land).

73. Nicholas O. Stephanopoulos, *Spatial Diversity*, 125 HARV. L. REV. (forthcoming 2012), available at <http://ssrn.com/abstract=1918165>; see, e.g., *Reynolds v. Sims*, 377 U.S. 533, 578 (1964).

74. There is no room in an essay of this sort to flesh out fully the arguments for or against such a proposal except to say that, as doing so would almost certainly improve voter knowledge, it is worth considering.

As between varying the number of representatives per district (which James Gardner has suggested, albeit for different reasons)<sup>75</sup> or varying the weight of each representative's vote, weighting votes seems like a better strategy. The reason is information: it is easier for residents of a legislative district to monitor one representative than three, five, or ten. It is not at all clear that the informational benefits of congruence would outweigh the informational burdens of plural representation.<sup>76</sup>

### 3. *Do Newspapers (or Broadcast Television) Still Matter?*

One might object to the goal of designing districts for media-market congruence on the ground that newspapers and broadcast television are not nearly so important today as they were when most of the studies of "congruence effects" were conducted. The papers discussed above mostly use data from the 1990s,<sup>77</sup> and since then cable television, online newspapers, and social media have become prominent sources of information.<sup>78</sup> One may fairly doubt whether districting practices should be altered on the basis of research findings that may have been superseded by new technology.

We are sympathetic to this criticism. But it does not demolish the case for paying attention to media markets when designing districts. First, a careful study of the closing of a small Cincinnati newspaper in 2007 found that the closing had significant effects on voter participation in local elections.<sup>79</sup> This is only one data point, and a small one at that, but it suggests that newspapers do still matter. So too do surveys showing that more Americans receive political information from newspapers than the Internet.<sup>80</sup> Until the claim that "media

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75. James A. Gardner, *What Is "Fair" Partisan Representation, and How Can It Be Constitutionalized? The Case for a Return to Fixed Election Districts*, 90 MARQ. L. REV. 555, 582-87 (2007) (arguing for fixed districts corresponding to local government boundaries, as a check on partisan gerrymandering and as a way to achieve representation for distinct local political communities).

76. Of course, there may be other considerations that cut in favor of splitting up some large media markets into multiple districts, such as facilitating the election of minority candidates.

77. For example, the standout paper by Snyder and Strömberg uses a newspaper dataset covering 1991-2002. Snyder & Strömberg, *supra* note 51, at 366.

78. See, e.g., Josh Sternberg, *How Local Politicians Are Using Social Media*, MASHABLE (Oct. 19, 2009), <http://mashable.com/2009/10/19/social-media-local-politics>.

79. Schulhofer-Wohl & Garrido, *supra* note 62, at 23.

80. See, e.g., TOM ROSENSTIEL, AMY MITCHELL, KRISTIN PURCELL & LEE RAINIE, PROJECT FOR EXCELLENCE IN JOURNALISM, PEW RESEARCH CTR., *HOW PEOPLE LEARN ABOUT THEIR LOCAL COMMUNITY* 15 fig.6 (2011), available at <http://www.pewinternet.org/Reports/2011/Local-news/Part-1.aspx>.



markets no longer matter” has evidence to back it up, redistricters should try to achieve media-market congruence when that can be done without sacrificing other important considerations.

#### 4. Tradeoffs

It is not our view that media-market congruence should be the only or necessarily the most important criterion in the design of legislative districts. Even if one were concerned solely with the effects of district design on the representation of district-level median voters, the traditional criteria of respect for political subdivisions and communities of interest probably should not be disregarded. There is some evidence that representatives of homogeneous districts tend to follow the preferences of the district’s median voter more consistently than representatives of heterogeneous districts.<sup>81</sup> Perhaps it is easier for these representatives to identify their district’s median voter. Or perhaps social networks in culturally homogeneous districts facilitate the transmission of information from one voter to the next. Or perhaps what researchers believe to be a “homogeneous district effect” is actually a media-market effect—we suspect that residents of cohesive communities tend to read the same newspapers and watch the same television programs.<sup>82</sup>

Whatever the explanation, there probably are benefits to the traditional districting criteria, and we express no view about how the balance between these criteria and the media-market criterion should be struck. Our modest

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81. See Elisabeth R. Gerber & Jeffrey B. Lewis, *Beyond the Median: Voter Preferences, District Heterogeneity, and Political Representation*, 112 J. POL. ECON. 1364 (2004) (finding, in a study of Los Angeles County districts, that representatives of homogeneous districts are more constrained by the median voter’s preferences than are representatives of heterogeneous districts); Stephanopoulos, *supra* note 73, at 4, 35 (finding that the socioeconomic composition of a district explains substantially more of the variation in congressional representatives’ voting patterns in spatially homogeneous districts than in spatially heterogeneous districts and that voter rolloff—which may indicate voter confusion—in House races is about 6% higher in the most heterogeneous districts compared with the most homogeneous districts); see also Michael J. Ensley, Michael W. Tofias & Scott de Marchi, *District Complexity as an Advantage in Congressional Elections*, 53 AM. J. POL. SCI. 990 (2009) (finding that incumbents elected from districts in which public opinion is multidimensional fare better against challengers than do incumbents elected from districts where public opinion is one dimensional).

82. On the political relevance of ethnic media, see, for example, *Ethnic Media Helps Shape Narrative in 2010 Elections*, NEW AM. MEDIA (Oct. 28, 2010), <http://newamericamedia.org/2010/10/as-key-elections-near-cas-ethnic-media-basks-in-the-spotlight.php>. Note that none of the studies that find a correlation between district homogeneity and representation of the district median’s preferences has controlled for media-market congruence.

point is that media-market congruence belongs on the list of considerations to be weighed.

#### **IV. DISTRICTING TO IMPROVE THE QUALITY OF PARTY BRANDS**

Drawing districts for media-market congruence is a modest and probably modestly effective response to the voter-ignorance problem. There is, however, another and potentially much more important channel through which district design may enable a low-information electorate to induce responsive governance: political parties.

As we explained in Part I, it is through political parties that ordinary voters can steer the ship of state. If the parties have consistent, differentiated platforms of roughly equal appeal to the median voter in the jurisdiction, if the parties have some control over who runs under the party label, and if the parties have been taking turns in power, then voters who know little about the particulars of individual candidates can still make a reasonably effective choice using ballot labels. Voters concerned about particular issues will know which candidate to pick because party labels communicate the candidates' likely stances on issues that divide the electorate. Voters needn't pore over party platforms to make this inference. Rather, their "running tally" of observations about the party in government should suffice. Voters with weak issue preferences but a sense of how the government has performed will also know whom to pick, at least if they can discern the partisan balance of power in the government. They will side with candidates of the party in power when things are going well, and with the opposition party when things are going poorly.

The question we take up here is what this insight implies about the design of electoral districts. Districting decisions determine the ideological makeup of electoral districts, and because of this, districting seems likely to influence legislator behavior (to some degree) as well as the partisan balance of power in a legislature. To the extent that they affect the incentives of party insiders and the behavior of individual legislators, districting decisions should have some effect on the content of party brands, as party brands derive their meaning from the actions of party-affiliated politicians. So it makes sense to ask how districts should be drawn to induce the parties to provide useful party brands for voters.

But political scientists have yet to examine empirically how the distribution of legislative districts ultimately bears on the utility for voters of the major-party brands. Thus, the suggestions we make here must be treated as

provisional and speculative.<sup>83</sup> Note also that much of what affects the meaning and utility of party brands has nothing to do with districted elections.<sup>84</sup> For instance, the behavior of the President and the dynamics of presidential competition are surely dominant influences on the major-party brands.<sup>85</sup>

But on the margins, it is likely that districting systems affect party behavior and hence how useful party brands are to low-information voters. This Part will lay out a preliminary set of criteria with which we might judge the effect of districting on party brands, and hence the likelihood that policy will follow the informed preferences of the electorate.

#### *A. What Makes Party Labels More Useful for Voters? A Nonexhaustive List*

In order to address how districting affects the utility of party labels as tools with which ordinary voters can induce competent, responsive government, one must begin with some account of what makes party labels better or worse for this purpose. There are surely lots of factors that matter on this score. Here we aim only to provide a nonexclusive list of traits, each of which, we'll argue, can be influenced by districting decisions. None of these are absolute prerequisites for the ordinary voter to make some use of the party label, but they do make the label more valuable.

The first and most important factor is that the party labels should differentiate the serious candidates on big policy questions. If party leaders stake out contrasting positions and if candidates who run on each party's label generally take the same side, a citizen who is pro-choice or pro-universal health care can vote for a Democrat, for example, without worrying about whether he is actually supporting a rogue candidate, or whether the Republican in the race

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83. To be clear, there is plenty of evidence supporting Duverger's hypothesis that plurality-winner elections in single-member districts tend to induce two-party systems. What is less clear is how the design of districts *given* single-member districts and/or plurality-winner elections affects the party system.

84. In Elmendorf & Schleicher, *supra* note 4, we offer a number of suggestions for how law might improve the quality of party brands, none of which have anything to do with districting.

85. Another question we shall bracket for present purposes is how to get the states to follow our suggestions—this Section is aimed only at developing substantive criteria for optimal districting policy. For academic perspectives on the “here to there” problem, see, for example, Christopher S. Elmendorf, *Representation Reinforcement Through Advisory Commissions: The Case of Election Law*, 80 N.Y.U. L. REV. 1366 (2005); Heather K. Gerken, *Getting from Here to There in Redistricting Reform*, 5 DUKE J. CONST. L. & PUB. POL'Y 1 (2010); and Michael S. Kang, *De-Rigging Elections: Direct Democracy and the Future of Redistricting Reform*, 84 WASH. U. L. REV. 667 (2006).

is further to the left on the issue he cares about. The major party leaders needn't have radically opposed stances—e.g., Democrats advocating universal single-payer health care and Republicans the abolishment of Medicare and Medicaid—but the parties' stances must be sufficiently distinct for issue-oriented voters to see which party would move policy in the voter's preferred direction.<sup>86</sup> The parties' stances should also be ideologically coherent, so that voters who prefer party A to party B on issue *x* generally prefer A to B on issue *y* as well.<sup>87</sup>

Party labels become even more helpful when they not only indicate the relative positions of the leading candidates in a given race, but when all of the serious candidates who run on a given party's label take similar positions. It is easier for a voter to know what "Republican" means if most Republicans have roughly the same stances on the issues. Also, when all of a party's serious candidates have similar policy positions, the party's legislative caucus is likely to be cohesive, enabling the party to govern *qua* party if awarded a legislative majority.

The more internally cohesive the parties in government are, the stronger the linkage is between the results in legislative elections and the outcomes that issue-oriented voters care about.<sup>88</sup> Internal party cohesion is equally important for retrospective voters who have weak issue preferences but a strong sense of whether things are getting better or worse. It makes no sense for these voters to reward or punish the majority party if it is a majority in name only, and

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86. Several studies of actual and simulated presidential elections have found that ideological divergence between the candidates is associated with more "correct voting," i.e., voting in line with the voter's full-information preferences. See, e.g., Richard R. Lau, David J. Andersen & David P. Redlawsk, *An Exploration of Correct Voting in Recent U.S. Presidential Elections*, 52 AM. J. POL. SCI. 395, 396-98 (2008); Richard R. Lau & David P. Redlawsk, *Voting Correctly*, 91 AM. POL. SCI. REV. 585, 592-93 (1997). However, it is likely the case that, as parties become more ideologically divergent, centrist voters are faced with increasingly difficult choices.
87. As we have explained elsewhere, see Elmendorf & Schleicher, *supra* note 4, at 30-46, the major party brands often *do not* have ideologically coherent stances, especially with respect to state or local governments. The parties may fail to establish distinct positions on important questions in the subnational issue space, and, in states and cities whose median voter is well to the left or right of the national median voter, the nationally disfavored party is likely to have difficulty establishing an ideologically competitive subbrand specific to the state or local government in question.
88. In units of government with nonpartisan elections, where parties are not listed on the ballot, there are rarely strong parties internal to the legislature. As Gerald Wright and Brian Schaffner have shown, this diminishes electoral accountability, as voters cannot assign responsibility for outcomes to parties, and nonpartisan legislators often deviate from the positions they campaigned on. Gerald C. Wright & Brian F. Schaffner, *The Influence of Party: Evidence from the State Legislatures*, 96 AM. POL. SCI. REV. 367, 375-77 (2002).

actual legislative outcomes result from unpredictable cross-party coalitions on issues that randomly enter the legislative agenda.<sup>89</sup>

Equally important is that the package of positions embodied in each party's brand be roughly equally attractive to the median voter in the polity. Party labels are more useful to voters if both parties are competitive. If one party dominates the other on most prominent issues, that party may end up with a de facto lock on control of the government. An entrenched majority party, unthreatened by the prospect of losing power, has little incentive to come up with policy innovations that would improve the government's performance. The policies the government enacts are likely to result from subcoalitions within the dominant party—coalitions that ordinary voters do not see and cannot hold accountable. Long periods of one-party rule also make it difficult for ordinary voters to discern the meaning of the opposition party's brand, as voters have no "running tally"<sup>90</sup> of experience with its rule. Oscillation in party control of the legislative branch makes each party's brand more intelligible to voters.

One further point merits mention. In an election system with single-member districts and first-past-the-post vote counting, it is easier for voters to achieve the policies they want if there are only two competitive parties.<sup>91</sup> When minor parties represent a credible alternative to one of the major parties in some legislative districts, the plurality-winner rule starts to generate perverse outcomes. For example, if a far-left party draws a substantial share of the vote in left-of-center districts, the conservative candidate may emerge as the plurality winner in some of these districts. The election of third-party candidates also complicates governance. Multiparty coalitions must form inside the legislature, resulting in less clarity for voters about which party was responsible for what. Because of this, "two-party dominance" is an indicator of how well the party system serves low-information voters (given plurality-winner elections).

No doubt there are other qualities that probably belong on any list of what makes for a healthy party system. But it is not our purpose to provide a

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89. Obviously, in situations where power is divided between a districted legislature (e.g., the House of Representatives) controlled by one party and a non-districted executive (e.g., the President) from another party, accurately holding parties accountable is more difficult regardless of how districting is done.

90. Bartels, *Running Tally*, *supra* note 13, at 117–18.

91. One might put it this way: Duverger's Law is normative and not merely positive. See David Schleicher, "Politics as Markets" Reconsidered: Natural Monopolies, Competitive Democratic Philosophy and Primary Ballot Access in American Elections, 14 S. CT. ECON. REV. 163 (2006).

comprehensive account or definition of what is a healthy partisan system.<sup>92</sup> The system-level attributes we have singled out are those that are particularly important for aiding a low-information electorate. Low-information voters need the major party brands to be accurate guides to candidates' positions, because these voters do not pay enough attention to know candidates' positions otherwise. Low-information voters need the party caucuses to be internally cohesive, so that holding the majority party accountable for performance is rational. Low-information voters need the major parties to be competitive vis-à-vis control of the legislature, so that the parties have incentives to innovate and govern with the median voter in mind, and so that the ordinary voter can develop an experiential sense of what each party stands for. And low-information voters are burdened particularly by the search costs and strategic complexities that arise when credible third parties contest plurality-winner elections. Districting, we hypothesize, affects the party system in all of these respects, at least at the margin.<sup>93</sup>

### *B. Districting To Create More Useful Party Brands*

We suggest three rough criteria for the district designer who wishes to help low-information voters effectuate majoritarian policies and hold elected leaders accountable through the party system. First, make sure that the median voter in the median district is the median voter of the polity as a whole.<sup>94</sup> Second,

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92. Needless to say, the utility of party labels for realistically poorly-informed voters is a very important factor for determining the utility of parties generally, probably the most important. But other factors can matter as well, and we are not aiming at figuring out the relative weights of these concerns as opposed to others in a fully fleshed-out theory of parties and democracy.
  93. In addition to the qualities we focus on here, the party system's utility for inducing governmental responsiveness to the substantive concerns and policy preferences of ordinary voters depends on the extent of "affective partisanship" and its distribution across the electorate. See Elmendorf & Schleicher, *supra* note 4, at 38. An affective partisan, or "Michigan voter" as we have termed him, is a voter whose ties to his party of choice are grounded in the voter's upbringing or other factors unrelated to the voter's policy preferences and observations about conditions under the party's rule. We have treated this problem at length elsewhere, *see id.* at 38, but we set it aside for present purposes because we doubt that districting has much bearing upon it.
  94. Another possibility is to align the median voter in the median district with the median citizen in the population as a whole. We take no position here on whether "majority rule" should consist of rule by a majority of the class of persons eligible to vote, or rule by a majority of all citizens. For discussions of these issues, see Joseph Fishkin, *Weightless Votes*, 121 YALE L.J. 1897 (2012); see also *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), which upheld a redistricting plan based on total population rather than voting population.

create a “substantial” number of median voter districts, i.e., districts in which the district-level median voter is also the polity-wide median. Third, limit interdistrict heterogeneity in the position of district medians.<sup>95</sup> A bit more simply, our claim is that if the map of legislative districts is not ideologically biased to the left or right, if there are many ideologically balanced districts, and if there are few outlier districts, then political parties will be encouraged to self-organize and position themselves so as to help low-information voters induce responsive governance.

This claim comes with several caveats. We acknowledge that our second and third criteria are somewhat imprecise. We have no determinate answer to the question of what is a sufficient number of median voter districts, or how much interdistrict heterogeneity is too much. Nor can we now predict how much party behavior will change in response to a given increase in the number of median-voter districts, or a given reduction in interdistrict heterogeneity. We have a hypothesis, not an estimated model. Further, the factors we signal out as important matter vis-à-vis the legislature as a whole—and there are all sorts of complications introduced by the fact that congressional districting, for example, is conducted by the states in a disaggregated fashion.<sup>96</sup> Another concern is that American political parties are vertically integrated, and, as we have explored in other work, there are many impediments to the development of competitive party subbrands for purposes of state- and local-government elections in jurisdictions whose electorates are more liberal or conservative than the national electorate.<sup>97</sup> But whatever the limits of our particular suggestions in this Essay, the consequences of districting for party positioning and strategy ought to be part of the districting calculus, given the centrality of parties and partisanship for voter decisionmaking.

So much for caveats; let’s dig into the criteria. To start, it is not hard to see why a map of legislative districts should be ideologically unbiased, meaning that the median voter in the median district is also the median voter in the polity as a whole. If the median voter in the median district were located to the left or right of the median voter in the polity, a liberal or conservative party

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95. By “limit” we do not mean that interdistrict heterogeneity should be reduced from current levels. Such an assessment would require a closer empirical investigation of interdistrict heterogeneity and the development of a benchmark for how much there should be, neither of which is within the scope of this Essay. Instead we mean something like “ensure that interdistrict heterogeneity does not get too high or cause the problems we discuss below.”

96. See generally Adam B. Cox, *Partisan Gerrymandering and Disaggregated Redistricting*, 2004 SUP. CT. REV. 409 (explaining problems that result from courts’ and commentators’ failure to attend to the disaggregated nature of congressional districting).

97. Elmendorf & Schleicher, *supra* note 4, at 36.

could win control of the legislature notwithstanding popular-majority support for the other party's platform. Formal models of platform choice often suppose that parties will design their platform to appeal to the median voter in the median district,<sup>98</sup> and if this is right, then our first prescription will also yield party brands that appeal to the jurisdiction-wide median voter. To be sure party brands could be informative while having highly asymmetric appeal for the median voter.<sup>99</sup> But if one wants *government* to be responsive to the median voter, the party brands should have roughly equal appeal to voters in the middle, so that shifts in these voters' ideological beliefs or performance judgments will also shift the partisan balance in the legislature and, by extension, the legislature's outputs.

Our second recommendation—create a substantial number of districts whose median voter is the polity-wide median—may be less intuitive. Our argument is that maps should include a lot of districts that are closely divided between conservatives and liberals because this will result in *disproportionality* in representation. If there are a lot of closely divided districts, a party that wins a bare majority of the popular vote will generally end up with a supermajority of legislative seats; the party's small margin will translate into winning a lot of close races. But this disproportionality in seats relative to votes will help ordinary voters make better use of the party labels and put pressure on the parties to enact majoritarian policies.

We cannot state with precision how large the “winner's bonus” should be, but we can identify several important benefits of a large winner's bonus. A big winner's bonus makes it easier for ordinary voters to tell which party is in charge of the legislature. One party or the other will generally control the legislature by a wide margin, leaving little doubt as to which party should be blamed or credited for the legislature's output.

Further, the bigger the winner's bonus, the stronger each party's incentive to build a brand that appeals to the median voter.<sup>100</sup> Elected officials have

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98. The foundational paper is Melvin J. Hinich & Peter C. Ordeshook, *The Electoral College: A Spatial Analysis*, 1 POL. METHODOLOGY 1 (1974).

99. To illustrate, imagine that all candidates who run under party B's label take positions corresponding to the ideal point of the voter at the seventieth percentile (where zero is most conservative and one hundred is most liberal), and all candidates who run under party A's label take positions at the ninety-fifth percentile. The labels are very informative, but the median voter will always prefer party B, and there will be very little pressure on party B to produce valence goods or even the median voter's preferred policies.

100. Political scientists have not yet tested our hypothesis that the major parties adopt more median-voter-congruent positions as the share of median-voter districts increases.

There is a tangentially related body of work investigating the proposition that gerrymandering is somehow to blame for interparty polarization. Most (but not all) studies



interests other than seeing their party win a majority—from pleasing their base through expressive politics to petty corruption or merely having an audience for inappropriate Facebook messages. But officials can only satisfy these preferences if they continue to hold their seats. Making more seats marginal will push considerations other than appealing to the median voter to the

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find that gerrymandering is not at fault. See, e.g., Thomas L. Brunell & Bernard Grofman, *Evaluating the Impact of Redistricting on District Homogeneity, Political Competition, and Political Extremism in the U.S. House of Representatives, 1962 to 2006*, in *DESIGNING DEMOCRATIC GOVERNMENT: MAKING INSTITUTIONS WORK* 117, 119 (Margaret Levi et al. eds., 2008) (concluding that there is at best a weak relationship between electoral security of a member of the U.S. House and his or her extremism); Nolan M. McCarty, *The Limits of Electoral and Legislative Reform in Addressing Polarization*, 99 CALIF. L. REV. 359, 366-67 (2011) (observing that the U.S. Senate, which is not districted, has polarized nearly to the same degree as the U.S. House); Nolan McCarty, Keith T. Poole & Howard Rosenthal, *Does Gerrymandering Cause Polarization?*, 53 AM. J. POL. SCI. 666, 678-79 (2009) (running simulations that suggest that current polarization in Congress would not be much diminished by conventional redistricting reforms); Seth Masket, Jon Winburn & Gerald C. Wright, *The Limits of the Gerrymander: Examining the Impact of Redistricting on Electoral Competition and Legislative Polarization* (conference paper prepared for the 2006 Conference on State Politics & Policy, May 18, 2006), available at [http://php.indiana.edu/~wright1/Masket\\_Winburn\\_Wright\\_Lubbock2006.pdf](http://php.indiana.edu/~wright1/Masket_Winburn_Wright_Lubbock2006.pdf) (showing, in a cross-sectional study, that state legislatures in states with court and commission-drawn maps are just as polarized as state legislatures elected under legislatively drawn maps). But see Corbett A. Grainger, *Redistricting and Polarization: Who Draws the Lines in California*, 53 J.L. & ECON. 545 (2010) (showing, in the first within-state/over-time study of redistricting institutions, that judge-drawn districts in California quickly induced more moderate behavior from legislatures, and legislature-drawn districts quickly induced polarization).

These studies shed little light on our hypothesis, however, because they are either studies about the effects of alternative redistricting institutions (rather than alternative distributions of voters across districts) or studies about how the ideological makeup of an individual district does or does not anchor the voting behavior of the district's representative. We've offered no hypothesis about redistricting institutions. As for the distribution of voters across districts, we expect this to affect voting patterns in the legislature not because the representative of each district will hew closely to the ideological position of her constituents, but because as the number of median voter districts increases, the parties have stronger incentives to take moderate positions and field moderate candidates everywhere. This is so because the parties' brands are defined by the actions of the party's legislators taken as a whole, not just a handful of figureheads. Cf. Ansolabehere, Snyder & Stewart, *supra* note 35 (showing, on the basis of a huge historical dataset, that congressional candidate positions have largely been determined by party-level factors rather than district characteristics); Jonathan Woon & Jeremy C. Pope, *Made in Congress? Testing the Electoral Implications of Party Ideological Brand Names*, 70 J. POL. 823 (2008) (showing correlation between rollcall votes of the major parties' representatives in Congress and citizens' perceptions of the party brands). Our argument is that a larger number of median voter districts may make John Boehner and Nancy Pelosi do more to appeal to the median voter.

side.<sup>101</sup> A member of Congress in a marginal seat will pressure her party to take competitive stands, whether through internal negotiations or by threatening to defect if the party takes unpopular stands, and she is less likely to engage in activities that drag down the value of the party brand.<sup>102</sup> Evidence from the states tends to corroborate the hypothesis that competition for control of the legislature causes lawmakers to invest in party branding. Competition shifts the balance between broad, policy-minded legislation and district-specific bills,<sup>103</sup> and competition appears to induce one-dimensional roll-call voting.<sup>104</sup>

Our last prescription—limit interdistrict heterogeneity and, more specifically, limit the variance in the ideological position of district-level median voters—is the least straightforward. The idea is that district designers should reduce the number of “outlier” districts, or districts whose median voter is far from the overall median voter. There are good reasons to think that interdistrict similarity in the position of district medians bolsters the two-party system against the threat of entry by third parties, and increases the internal cohesion of the parties-in-government.

Steven Callander has shown mathematically that in single-member district, plurality-winner elections, an increase in the variance in the ideological position of district median voters causes the two major parties (if strategic) to

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101. Supporters of bipartisan gerrymandering miss this point. Scholars like Brunell and Persily argue that bipartisan gerrymanders are good because they promote some of the ends our system forgoes by using single-member districts and plurality-wins vote counting instead of list-based proportional representation. But this mistakes proportional *results* for proportional *representation*. In proportional representation elections, parties have an incentive to maximize their vote share, as this will have an effect on whether they are part of, and what role they have in, a multiparty coalition formed after the election. Bipartisan gerrymanders work from the assumption that only one of two parties can win. The governing coalitions are already formed, with the only question being which one will capture one of the very few genuinely open seats. As a result, bipartisan gerrymanders reduce each party's incentive to maximize vote share across the electorate, as they can focus exclusively on the needs of the few open seats, leaving them freer to pursue whatever other goals politicians may have.

102. Representatives elected from closely contested districts are also likely to provide better representation of their constituents' nonideological objectives than are representative of lopsided districts—for they must work harder to keep their jobs.

103. Gerald Gamm & Thad Kousser, *Broad Bills or Particularistic Policy?: Historical Patterns in American State Legislatures*, 104 AM. POL. SCI. REV. 151 (2010).

104. Royce Carroll & Jason Eichorst, *The Role of Party: The Legislative Consequences of Partisan Electoral Competition* (conference paper presented at the Annual Meeting of the Am. Political Sci. Ass'n, Sept. 2, 2011), *available at* <http://ssrn.com/abstract=1901212>; *see also* Wright & Schaffner, *supra* note 88 (finding that nonpartisan legislatures are not as likely as partisan legislatures to be organized around a single dimension).

adopt more extreme positions.<sup>105</sup> The major parties move away from the center to ward off entry by third parties in the most extreme districts. When interdistrict variation becomes sufficiently extreme, third parties do enter and win in some districts.<sup>106</sup>

Callander's model assumes that party brands mean the same thing across legislative districts. Sometimes, however, a party is able to "solve" the problem of interdistrict heterogeneity by developing regionally differentiated brands for a given level of government. In the United States for much of the twentieth century, there was, in practice, a Northern Democratic Party and a Southern Democratic Party, and the Northern Democrats had little more in common with their Southern brethren than with Republicans. But this led to a further problem: because members of the majority party disagreed so vehemently with one another, they could not organize and govern Congress as a party. The Congress of the mid-twentieth century was a Congress in which key committee assignments were distributed on the basis of seniority rather than party fealty, leaving party leaders with little ability to push their party's agenda. This suited the majority party (the Democrats), because the party did not have an encompassing agenda as a party, and the emergence of such an agenda threatened to destroy the party's regionally differentiated brand for congressional elections. When interdistrict heterogeneity becomes excessive, either major-party cohesion or two-party dominance has to give.

In light of recent worries about partisan polarization, it is worth pointing out that cohesion within a party caucus need not go hand in hand with extremism. Indeed, James Snyder and Michael Ting have shown formally that, as parties become more coherent, individual candidates have less need to take extreme positions in order to differentiate themselves ideologically from their opponents.<sup>107</sup> The brand itself provides a sufficient signal to the candidate's natural base.

### C. Implications

The guidelines we have set forth, though imprecise, cast doubt on conventional defenses of both bipartisan gerrymanders and nonpartisan adherence to traditional districting criteria. Our guidelines also speak to the

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105. Steven Callander, *Electoral Competition in Heterogeneous Districts*, 113 J. POL. ECON. 1116 (2005).

106. See Thomas R. Palfrey, *Spatial Equilibrium with Entry*, 51 REV. ECON. STUD. 139 (1984).

107. James M. Snyder, Jr., & Michael M. Ting, *An Informational Rationale for Political Parties*, 46 AM. J. POL. SCI. 90, 91 (2002).

potential virtues of a wholly unfamiliar reform: electing a portion of the legislature using plurality-winner, party-list elections.

Bipartisan gerrymanders are conventionally defended on the ground that they provide quasi-proportional representation to voters affiliated with each party. But, under plurality-winner elections, there is little reason to suppose that rough proportionality between the major parties' share of legislative seats and their share of party-affiliated voters is a sign that ordinary voters are well represented.<sup>108</sup>

A map of legislative districts that essentially pre-assigns to each party a proportionate share of seats is one that deprives the parties of incentives to govern responsibly.<sup>109</sup> The defense of bipartisan gerrymanders mistakenly assumes that the parties' positions and governance strategies are fixed rather than endogenous to the system of legislative districts. Bipartisan gerrymanders limit "winner's bonuses" by definition, as they result in fewer races being in play. This diminishes the incentive of parties to compete for majority control and reduces the size of majority coalitions, making it harder for ordinary voters to hold parties accountable for the effects of public policy.

In good-government circles, reformers have taken to promoting schemes for the nonpartisan implementation of traditional districting criteria, such as respect for communities of interest and political subdivisions. Proponents of this strategy say that esoteric normative criteria like "competitiveness" or "partisan symmetry" are lost on the average voter. Reformers should keep it simple. Happily, the limited evidence on hand suggests that neutral implementation of traditional criteria will often result in more competitive seats and less partisan bias than is commonly found in legislatively drawn maps.<sup>110</sup>

There are, however, good reasons to suspect that districting maps that mindlessly track political subdivision boundaries and communities of interest generally will not do as good a job of inducing coherent party brands, tailored

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108. It makes little sense to try to achieve proportional results between the two major parties when doing so would interfere with the accountability mechanism of the two-party system.

109. Issacharoff, *Gerrymandering and Political Cartels*, *supra* note 25, at 612-30; Issacharoff, *Why Elections?*, *supra* note 25.

110. See JONATHAN WINBURN, *THE REALITIES OF REDISTRICTING: FOLLOWING THE RULES AND LIMITING GERRYMANDERING IN STATE LEGISLATIVE REDISTRICTING 200-01* (2008) (finding less partisan bias in states that require congruity with political subdivision boundaries); Stephanopoulos, *supra* note 73 (manuscript at 57 fig.13) (finding that, of the states with large congressional delegations, those with "spatially homogeneous" congressional districts had higher electoral responsiveness during the 2006-2010 period than states with spatially heterogeneous districts).

to the concerns of the median voter, as would maps self-consciously designed for that end. For starters, as Jonathan Rodden and coauthors have shown, the median district is likely to be too conservative, owing to the concentration of left-leaning voters in cities.<sup>111</sup> Big cities are usually heavily Democratic, so using political subdivision boundaries to draw districts effectively “packs” these voters into supermajority districts. This leaves most other districts—and crucially the median district—to the right of the median voter in the electorate as a whole.<sup>112</sup>

Further, as Bill Bishop has shown, migration patterns are resulting in geographic segregation by ideology.<sup>113</sup> Americans evidently like to live near other people who share their political outlook, with Republicans living in Republican-heavy counties and cities and Democrats living in Democrat-heavy counties and cities. Because of this, a districting map built around compact, self-defined “territorial communities” will have a great deal of interdistrict heterogeneity.<sup>114</sup> The map is also likely to be short on median-voter districts, at least if the distribution of ideological beliefs across voters is bimodal, or if political moderates are more willing than solid conservatives and solid liberals to live in communities where they constitute an ideological minority.

How, then, to proceed? One possibility is to delegate districting to a nonpartisan body and to instruct it to follow guidelines concerning the position of the median district, the number of median-voter districts, and the extent of interdistrict heterogeneity. This might well result in a new and quite peculiar modal district: one that conjoins a liberal urban core, a moderate inner suburb, and a conservative, affluent exurb or rural area. District boundary lines would look like the spokes of a bicycle wheel emanating out from central cities.<sup>115</sup> Moderates in these districts would be electorally decisive in two-party races, giving party insiders a powerful incentive to back candidates who poll well in the inner suburb. Heterogeneity in district-level medians would also be

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111. For empirical support, see Jonathan Rodden, *The Geographic Distribution of Political Preferences*, 13 ANN. REV. POL. SCI. 321, 326, 327 fig.2, 331-33 (2010), and sources cited therein.

112. *Id.* at 326-28 (demonstrating leftward skew in U.S. congressional districts, and explaining why this is likely to bias policy to the right and cause strategic problems for the center-left party, i.e., the Democrats).

113. BILL BISHOP, *THE BIG SORT: WHY THE CLUSTERING OF LIKE-MINDED AMERICA IS TEARING US APART* 5-16 (2008).

114. We borrow the helpful concept of “territorial community” from Nicholas Stephanopoulos. See Nicholas O. Stephanopoulos, *Redistricting and the Territorial Community*, 160 U. PA. L. REV. (forthcoming 2012).

115. This is painting with a very broad brush. Cities and suburbs come in all sorts of shapes, sizes, political orientations, and demographic realities.

curtailed, because the most liberal and conservative of voters would be paired in districts where they neutralize each other, as opposed to being assigned to homogeneous districts where they would determine outcomes.

While it should improve the party system, the new modal district likely would be quite unpopular. As Brunell has shown, residents of homogeneous congressional districts are happier with their representatives, and generally evince greater trust in Congress as a whole.<sup>116</sup> Further, legislators elected from spatially homogeneous districts are ideologically closer to the district's median voter than representatives of diverse districts.<sup>117</sup> It is also possible that the median-voter district and interdistrict similarity objectives would conflict with the media-market criterion,<sup>118</sup> or with legal obligations under the Voting Rights Act.

It is thus worth considering how else we might solve this problem, forgetting for the moment practical considerations.<sup>119</sup> Here's one way: elect a portion of the legislature from party lists, rather than single-member districts, and allocate the party list seats to the plurality winner of the popular vote.

Reformers who argue for "mixed" systems of districted and party-list elections generally do so on grounds of proportionality. As Germany has shown, a democracy can feature both territorial constituencies *and* proportional representation by party, if party-list elections are used to compensate for disproportionalities in representation that result from districted elections.<sup>120</sup>

Whatever their merits (and we do not intend to open the can of worms that is the debate about proportional representation (PR) v. single-member

116. BRUNELL, *supra* note 27, at 29-49.

117. Stephanopoulos, *supra* note 73 (manuscript at 10-11).

118. With disaggregated redistricting (as in the case of Congress, which is districted at the state rather than the national level), the median-voter district and interdistrict similarity criteria may sometimes clash with one another, too. This can be seen by imagining a state that is considerably more liberal or conservative than the national average. To create national median-voter districts in this state, it will probably be necessary to create extremely liberal (conservative) districts as well.

119. We can imagine plenty of objections to this proposal, and we maybe even share some of them. But the proposal should serve to stimulate thought on how "electoral engineering" can respond not only to the types of problems that comparative constitutionalists like Arend Lijphart or Donald Horowitz have traditionally applied them to (generally, social divisions in emerging democracies) but also to problems like voter ignorance. For a discussion of electoral engineering, see Schleicher, *What If Europe Held an Election and No One Cared?*, *supra* note 23, at 148-52.

120. For an introduction to the German electoral system, see Susan E. Scarrow, *Germany: The Mixed-Member System as a Political Compromise*, in *MIXED-MEMBER ELECTORAL SYSTEMS: THE BEST OF BOTH WORLDS?* 55-69 (Matthew S. Shugart & Martin P. Wattenberg eds., 2003).

districts), PR-oriented reforms can make life harder for low-information voters. Under PR systems, citizens have to distinguish among a larger number of parties,<sup>121</sup> and PR systems tend to result in coalition governments, which impairs retrospective voting.<sup>122</sup>

But the German model of electing some legislators from single-member districts and others on the basis of party lists could be adapted to reinforce the two-party system—and in the process make the parties more median-voter responsive. Under the German model, citizens vote twice when electing the legislature.<sup>123</sup> One vote is cast for a territorial representative. The other is cast for a party list, i.e., a party's enumeration of candidates. The winner of each territorial constituency gains a seat in the legislature. Additional seats are awarded to parties that received at least 5% of the party-list vote, in numbers sufficient to bring each party's number of seats in the legislature into proportion with its share of the party-list vote.

Instead of employing the list vote to determine each party's share of seats, the state could award a fixed representational bonus to the plurality winner. Perhaps 20% or 25% of the lawmakers could be chosen in this way, with the rest elected using conventional single-member district, plurality-winner elections. Because all of the party-list votes would go to the plurality winner, the standard Duvergerian forces would discourage third-party entry.<sup>124</sup> The party-list contest would be fought between the same two parties that predominate in single-member district elections, and the contest would aim at the heart and mind of the jurisdiction-wide median voter.<sup>125</sup>

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121. For evidence that ordinary citizens have trouble with this, even in high-profile presidential elections, see Lau, Andersen & Redlawsk, *supra* note 86, at 407.

122. Anderson, *supra* note 21, at 281-86.

123. This method is used in Germany and New Zealand, among other places. DAVID M. FARRELL, *COMPARING ELECTORAL SYSTEMS* 86-88 (1997).

124. Specifically, voters would strategically refrain from "wasting" their party-list vote on a third party, and strong candidates and donors would strategically affiliate with one or the other of the two leading parties (rather than a third party) for analogous reasons. On Duverger's law and the supporting evidence, see generally DENNIS C. MUELLER, *PUBLIC CHOICE III*, at 271-76 (2003), which describes the law and notes, for instance, that "[t]he mean number of parties based on seats in the legislature of [single-member-district] counties turns out to be precisely 2.00."

125. Andrew Rehfeld has suggested another way of creating competition for the median voter: by randomly assigning each citizen to a nonterritorial constituency. ANDREW REHFELD, *THE CONCEPT OF CONSTITUENCY: POLITICAL REPRESENTATION, DEMOCRATIC LEGITIMACY, AND INSTITUTIONAL DESIGN* 209-44 (2005). Rehfeld urges that the entire legislature be elected from constituencies so defined, but the idea could also be adopted along the lines of our "bonus" proposal. The legislature would be subdivided into territorial (perhaps 80%) and nonterritorial (perhaps 20%) seats. Each citizen would be assigned to a territorial and a

This would give each party a powerful incentive to develop a competitive brand calibrated to the concerns of the median voter in the jurisdiction. It would reward the party that wins the median voter with a big bump in representation, helping to clarify which party is in charge of the legislature. And, by incidentally increasing the size of the territorial districts,<sup>126</sup> it should decrease the ideological dispersion of district-level medians.

Note also that if a substantial share of legislators were chosen in a plurality-winner party-list election, it is quite likely that the median legislator will have been chosen by the median voter, through the party-list election. Districted elections may still have a rightward skew, but this is not nearly so consequential in a world where control of the legislature generally turns on which side wins the party-list election, rather than which party wins the greater number of districted races.

Finally, because the party-list election would typically determine control of the legislature, the parties themselves would not have much to gain from gerrymandering the districted seats. The legal criteria for districting, traditional or otherwise, are thus more likely to be followed.<sup>127</sup>

## CONCLUSION

Voter ignorance is certain to be a problem in any mass democracy. Voters do not have any private incentive to learn about the ideological beliefs or performance of elected officials. But how well elections perform the role that our constitutional order assigns to them depends on voters' collective

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nonterritorial district, and would cast two votes (one for each representative). Statistically, the nonterritorial districts are sure to be median-voter districts, so the parties' incentives under this scheme would be pretty similar to the parties' incentives under our proposal. But we doubt that a system of nonterritorial districts would work as well as our party-list proposal. Voters would have difficulty monitoring their nonterritorial representative (see the discussion of "media market districts" in Part III); the parties would have weaker control over lawmakers (due to the lack of 'party-list' reward and punishment); and the logistics of holding elections in nonterritorial districts created by random assignment of voters would present administrative challenges.

<sup>126</sup>. The size of electoral districts must, of course, increase if the size of the legislature is held constant and some share of the seats (say, 25%) are chosen by party list rather than districted elections.

<sup>127</sup>. Cf. Scott T. Macdonell, *Rendering Gerrymandering Impotent: A Simple Redistricting Reform* (Oct. 27, 2011) (unpublished manuscript), <http://www.scott-macdonell.com/wp-content/uploads/2011/10/RenderingGerrymanderingImpotent.pdf> (modeling party districting strategies and showing that a reform which minimizes the representational payoff from gerrymandering generally diminishes the redistricting party's ability to bias policy outcomes).



judgments about these very things. The tools we have for overcoming this inherent problem are our election laws. From ballot access to campaign finance, virtually every election law decision can have an effect on the ability of low-information voters to participate meaningfully in politics. We have shown that districting decisions play a role as well. Our democracy is only as good as our voters, and our election laws help determine how good they—or rather, we<sup>128</sup>—in practice are.

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128. Or as one of us says to his students after asking whether any of them knows anything about their state senator or county commissioner: “Let this remind you: voter ignorance is not a problem that only applies to some distant and benighted they. Rather, it is a problem that is very much about us, all of us.”

